IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 14TH SEPTEMBER 2007 / 23RD BHADRA 1929

WP(C).No. 19723 of 2007(V)

PETITIONER:

QUEEN MARY PUBLIC SCHOOL,
PANIKKANKUDY, IDUKKI, REP. BY ITS MANAGER,
SR.BENEDICT S.D.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE PRINCIPAL OFFICER,
CENTRAL BOARD OF SECONDARY EDUCATION
(AFFILIATION UNIT), AMC CELL, PREETH VIHAR,
DELHI-110 092.

BY GOVERNMENT PLEADER
SRI.DEVAN RAMACHANDRAN sc, cbse
SRI.P.A.MOHAMMED SHAH
SRI.K.I.ABDUL RASHEED
SRI.P.H.SHAJAHAN
SRI.V.K.BEERAN(SR)
BY ADV. GENERAL SRI.C.P.SUDHAKARA PRASAD.
BY GOVERNMENT PLEADER SRI. A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, ALONG WITH 16835 OF 2007 AND CONNECTED CASES THE COURT ON 14/09/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.19723/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXT.P2:- COPY OF THE LETTER DT. 28.6.05 SENT BY THE DISTRICT EDUCATIONA. OFFICER TO DIRECTOR OF PUBLIC INSTRUCTION, TRIVANDRUM.

EXT.P3:- COPY OF THE REPORT DT. 15.5.06 SENT BY THE DISTRICT EDUCATIONAL OFFICER TO THE DIRECTOR OF PUBLIC INSTRUCTION.

EXT.P4:- COPY OF THE LETTER DT. 25.4.06 SENT BY DISTRICT EDUCATIONAL OFFICER TO DIRECTOR OF PUBLIC INSTRUCTION , TRIVANDRUM.

EXT.P5:- COPY OF THE ORDER DT. 26.10.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE ORDER DT. 17.1.07 ISSUED BY THE 1ST RESPONDENT

EXT.P7:- COPY OF THE JUDGMENT DT. 11.4.07 IN WPC. 8710/07.

EXT.P8:- COPY OF THE LETTER DT. 8.5.07 SUBMITTED BY PETITIONER TO THE 1ST RESPONDENT.

EXT.P9:- COPY OF THE ORDER DT. 13.6.07 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R1(a):- COPY OF THE GOVERNMENT ORDER NO.3691/06/G.EDN. DT. 19.8.06.

A.K. Basheer, J.

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W.P(C) Nos.19723, 19878, 20529, 20310,
20322, 19270, 18846, 16844, 16835,
16843, 16644, 15558, 13652,
8120, 5191, 4149, 7611, 1486
4016, 7986, 15813, 18735,
7140, 20328, 22665, 22669,
22381 & 23344 of 2007.

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Dated this the 14th day of September, 2007.

J U D G M E N T

The short but important question that has been raised in this bunch of writ petitions is whether the Government of Kerala is justified in taking the decision not to issue No Objection Certificate for affiliation to Central Board of Secondary Education to private unaided schools in the entire State, barring 5 Districts namely Kasaragod, Kannur, Kozhikode, Wayanad and Malappuram and that too only in certain areas of those districts where extreme educational backwardness among the members of a particular religious community persists.

2. In the nature of the commonality of the issue, it may not be necessary to refer to the individual grievances of the petitioners as highlighted by them in their respective writ petitions. But the identical grievance is that the applications submitted by the petitioners for grant of No Objection Certificate for affiliation are being refused to be considered by the Government in the light of its order (G.O(P)

107/07/G.Edn) dated June 13, 2007. It is contended by the petitioners that the Government cannot, in the guise of policy, refuse to grant No Objection Certificate for affiliation by issuing such a blanket order of prohibition to the schools in majority of the Districts in the State, while granting the benefit to the applicants from only a handful of districts and that too restricting it to certain areas where educational backwardness allegedly persists in respect of a particular religious community.

3. In this context it is pertinent to note that No Objection Certificates for affiliation were being issued by the Government in the past, in terms of the guidelines/stipulations contained in G.O (Ms). 18/88/G.Edn. dated January 12, 1988. A large number of private unaided institutions in the State have got affiliation till 2004-05 on the basis of the above order. But it appears that during 2006 the applications submitted by the petitioners and several others were refused to be entertained by the Government on the ground that it was waiting for the report of a High Level Committee constituted for the purpose of recommending "the principles and guidelines to be followed in sanctioning new schools, upgrading and recognising existing schools and for giving N.O.C for CBSE/ICSE affiliated institutions".

4. The Government had issued G.O.(Rt).3691/06/G.Edn. dated August 19, 2006 in this connection, in which it was mentioned that the Government felt it necessary to lay down the principles and guidelines to be followed in the matter in view of the "mounting demand" for sanctioning new schools. It was further mentioned that "the social

impact of sanctioning new schools, the consequences to other institutions and employees in them as well as the financial repercussions of the State exchequer are also to be kept in view while sanctioning new schools. Schools cannot be sanctioned or upgraded to satisfy the demands of existing school Managers. It is also necessary to avoid ad hoc and haphazard decision for sanctioning new schools as such decision will cause dis-satisfaction and will lead to litigation. The present situation is that the schools are increasing but the student population is decreasing. The educational need of a locality has to be rationally and realistically assessed and modalities for the same have to be determined".

5. The Government had constituted a High Level Committee comprising the Principal secretary to Government, General Education Department, Director of Public Instruction, Director of Higher Secondary Education and Director for Vocational Higher Secondary Education for the above purpose. It was after obtaining the report from the above Committee that the Government had issued order dated June 13, 2007 in which the policy parameters and guidelines were set out. In this order, the Government made it clear that request for N.O.C for affiliation will be entertained only from among the applications to be received from the 5 districts referred to above. Petitioners seek to quash the above Government Order to the extent it impinges their right to get N.O.C for affiliation.

6. In this context it will be convenient to notice the relevant clauses in the above order of the Government which deal with recognition of unaided schools and N.O.C for CBSE/ICSE schools.

The relevant clauses are extracted hereunder:

> "2. Recognition of unaided schools and NOC for CBSE/ICSE schools:
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> 1. As a policy, un-aided unrecognized schools will not be given recognition.
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> 2. In order to overcome the educational backwardness of the Muslim Community, recognition will be granted and NOC for starting CBSE/ICSE schools shall be issued to those unaided schools satisfying the following conditions apart from those specified in the Kerala Education Rules as the Government are convinced that extreme educational backwardness among the members of the Muslim Community persists in certain areas of Malappuram, Kozhikode, Kasargod, Kannur and Wayanad Districts. Accordingly applications will be limited to the above districts alone. The additional conditions are the following:--
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> a) The school shall have started functioning on or before 01.06.2000.
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> b) The School shall have a minimum of 500 students on its roll.
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> c) The school shall have classes from 1 to 10.
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> d) The school shall be functioning in a socially and educationally backward locality.
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> 3. In the event of non-adherence to the conditions

and non-maintenance of quality standards by schools affiliated to CBSE/ICSE with Government's NOC, the matter of withdrawal of recognition / NOC will be taken up with Central Government."

7. The Central Board of Secondary Education is an autonomous body working under the aegis of the Ministry of Human Resource Development under the Government of India. Admittedly, Central Board of Secondary Education is not a statutory body. The Board came into existence in the year 1929. The main objectives of the CBSE are:

(a) to affiliate institutions in and outside the country.

(b) to conduct annual examinations at the end of Class X and Class XII and

(c) to conduct entrance examinations to professional courses for admission into Medical and Engineering colleges.

8. The CBSE is governed by its bye-laws called "Central Board of Secondary Education Affiliation Bye-laws." These bye-laws came into effect from January 28, 1988. Clause 2(1)(i) in Chapter I of the bye-laws refers to "Affiliation" which means "formal enrollment of a school among the list of approved schools of the Board following prescribed/approved courses to study upto Class VIII as well as those preparing students according to prescribed courses for the Board's examinations".

9. No Objection Certificate is defined in the bye-laws as "a letter issued by the appropriate authority of the Education Department of the State/Union Territory in respect of school situated in the State/Union Territory for affiliation of the school to the CBSE".

Clause 3(1) of Chapter II of the affiliation bey-laws stipulates that the school seeking provisional affiliation with the Board must have formal prior recognition of the State/Union Territory Government (emphasis supplied). It is further provided that the application "either should be forwarded by the State Government or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the CBSE."

10. Clause 3(1) referred to above, unambiguously shows that No Objection Certificate from the State Government concerned, is a mandatory pre-requisite for affiliation to the CBSE. It is contended by the respondent/State that issuance of No Objection Certificate can be only subject to the policy decision of the Government, which has to necessarily keep in view the socio economic conditions of the student community in general and particularly of those belonging to the poorer sections, while formulating the education policy. It is contended by Sri.C.P.Sudhakara Prasad, learned Advocate General that the anxiety of the Government is only to ensure that the less affluent students are not deprived of opportunity to attend schools According to the learned Advocate General, uncontrolled proliferation of CBSE schools in the State will adversely affect the Government/aided schools in the State which do not collect any tuition fee at all as compared to the CBSE schools. He contends that many of the Government/aided schools are facing threat of closure due to the sudden spurt in the growth of CBSE schools. Many teachers in the Government/aided schools are facing threat of retrenchment every year due to fall in divisions which is a direct consequence of fall in student strength in those schools. The

case of the Government appears to be that more and more students are flocking to CBSE schools, the number of which in the State has now risen to 529. This figure, according to the respondent, is very high as compared to other States in the country, especially the southern States of Tamil Nadu, Karnataka and Andhra Pradesh. It is pointed out that State of Kerala ranks as third in the number of CBSE schools in the country. A chart showing the number of CBSE schools in the various States has been incorporated in the additional counter affidavit. There are 12644 educational institutions in the State, out of which 529 are CBSE schools. Out of the 12644 schools, 4498 are run by the Government while 7290 are aided schools. The remaining 856 are private unaided schools. The Government had noticed that Muslim community in the 5 districts of Kasargod, Kannur, Kozhikode, Wayanad and Malappuram has been facing "educational backwardness". In those 5 districts in which Muslim population is comparatively high, educational facilities have been found to be inadequate. The Government therefore thought it fit to issue No Objection Certificate for affiliation to the CBSE/ICSE, if applications are received from those districts, only if such schools satisfy the other stipulations contained in the order of the Government and also subject to the statutory parameters contained in Chapter V of the Kerala Education Rules.

11. It is further contended by the respondents that the provisions contained in Chapter V KER will govern the field in the matter of grant of NOC for affiliation. The Government is entitled to consider whether there is educational need in the area where the CBSE school is

proposed to be established, and also whether other policy parameters and statutory requirements are satisfied. The applicants cannot, as of right, demand that the Government is bound to issue No Objection Certificate for its mere asking. If only the Government is satisfied that the proposed CBSE school will cater to the educational need of the students in that particular area, then only the Government will issue N.O.C. It was therefore that the Government had prescribed certain conditions in the matter of grant of No Objection Certificate. While identifying the 5 districts which were educationally backward albeit with reference to a particular community, the Government wanted to ensure that the school seeking affiliation had started functioning on or before June 1, 2000 and that it should have a minimum of 500 students on its roll. The other condition is that the school should have classes from I to X. It is contended by the respondents that the above conditions mentioned in the order of the Government are not at all arbitrary, since they have been incorporated to achieve the Governmental policy of providing the poorer section of the student community easy access to education.

12. Per contra, it is contended by the petitioners that the Government cannot refuse to grant N.O.C on the specious plea that the Government/aided schools in the locality concerned will face threat of closure by opening of CBSE school in that area. Petitioners are not seeking any aid from the Government and therefore there will be no financial liability on the Government if the schools are allowed to function. Petitioners are interested to equip the future generation with quality education so that they are able to compete with students

coming from other parts of the country. The curriculum and syllabus followed by the CBSE have been maintaining a very good standard as compared to the other streams of education. Further, students studying in CBSE schools will find it convenient to get admission in other CBSE schools in any part of the country, even if their parents are transferred in connection with their employment.

13. It is also contended that the educational need envisaged in Chapter V KER has no relevance as far as the yardstick or criterion to be adopted for the purpose of grant of N.O.C for affiliation to the CBSE is concerned. It may be true that in the matter of opening of new schools, which follow the Kerala syllabus, the different parameters envisaged in Chapter V may have some relevance. But the CBSE syllabus being totally distinct and different from the Kerala syllabus, the respondents are not justified in contending that grant of NOC will be governed by the provisions contained in Chapter V KER.

14. A perusal of the provisions contained in Chapter V KER undoubtedly shows that the Government is vested with the power or authority to determine the areas where new schools are to be opened or existing schools are to be upgraded. Rule 2 in the above Chapter further delineates the procedure to be followed for the above purpose. The location of the existing schools and the distance from each other, strength of the staff, standards and accommodation available in those schools, the educational needs of the locality with reference to the habitation and backwardness of the area etc. are some of the matters which the Director has to keep in view while finalising the lists of aided schools and recognised schools preparatory to the grant of

sanction to open new schools or to upgrade existing schools. The Director has to invite objections in respect of the lists to be published in the gazette. It is thereafter that new schools are to be sanctioned in any local area. The rule further empowers the Government to review its order finalising the list either suo motu or on application by any person. Reference has been made to the above provisions contained in Chapter V only to indicate that the Government is undoubtedly vested with the power to take a general policy decision in the matter of opening and recognition of schools, taking into account the various factors like the "overall finances of the State" and in the "larger interests of the State".

15. In short, the provisions contained in Chapter V will undoubtedly show that the Government is the ultimate authority to grant sanction or recognition to open new schools or to upgrade existing schools. It may be noticed that Chapter V or any other Chapters in the KER do not refer to the power of the Government in the matter of grant of NOC for affiliation to CBSE/ICSE. But the contention of the learned Advocate General is that the source of power of the Government to accord sanction to open new schools in the State

having been vested with the Government, as revealed from Chapter V, the petitioners cannot question or challenge the policy decision of the Government not to issue NOC in a particular area/district. I am afraid the above contention cannot be accepted in its entirety. Understandably, the Board has to rely on the departmental machinery in the State concerned, to find out whether the applicant has got the requisite land, building and other paraphernalia to start the school. Simultaneously, the Board may also have to ensure that the applicant satisfies the other parameters envisaged in the bye-laws and also the local law governing the field of education in the State concerned. A perusal of the bye-laws itself shows that the affiliation is subject to the local statute. Therefore the contention raised by the Government that it has definitely got a say in the matter of grant of NOC cannot be brushed aside lightly. But it has to be mentioned here that the Government cannot refuse to consider any application for grant of NOC in a whimsical and arbitrary manner. It can be understood if the Government considers the application on a case to case basis with specific thrust on the educational need in a particular area and takes a decision for or against an applicant. The decision of the Government to exclude all but 5 districts from the zone of consideration will not stand scrutiny of law. As rightly pointed out by the petitioners, departmental authority who had conducted the survey of the localities in which the schools are proposed to be established had found that there was educational need in the areas in question. The applications were submitted along with those reports. The Government has refused to

even consider those reports on the ground that as a matter of policy the Government has decided not to start new schools in the State excepting 5 districts. It may be true that the Government may have obtained statistics to show that there is educational backwardness in 5 districts as far as Muslim community is concerned. Though the wisdom of the Government to give emphasis for improvement of the educational standard of a particular community in a region or area cannot be faulted, the Government will not be justified in ignoring the claim of other areas or community without any rational basis. To that extent the decision of the Government to exclude all other districts barring the 5 mentioned above cannot be justified.

16. As rightly pointed out by the petitioners, the stipulations in the order of the Government that request for affiliation will be considered only in respect of schools which had been established on or before 1/6/2000 and that the school should have a minimum student strength of 500 and also that the school should have classes from Standards I to X etc. are without any rational basis or justification. It can be noticed from the bye-laws that affiliation to CBSE, either provisional or permanent, is mandatory only from Std.VI onwards. Therefore the schools which have already been holding classes upto to Std.VIII and those which were established after the year 2000 will go out of reckoning in view of the above restrictive clause. It is on record that the petitioners have invested crores of rupees for establishment of the schools which have started operation after the year 2000. Those schools have been conducting classes for the last several years with the hope that they will get NOC as per the existing order of the

Government issued in 1988. But they cannot send their students for CBSE examination unless affiliation is obtained for which NOC from the State is mandatory. The predicament of the petitioners is understandable. The Government ought to have taken a more realistic view while issuing the order.

17. As mentioned earlier, the quality of education ought to have been the primary concern of the Government. But such a consideration does not appear to have weighed with the Government. The sudden change in policy could have been implemented in a phased manner to avoid difficulties to the large number of managements like the petitioners. Therefore there is considerable force in the contention raised by the petitioners that the above clauses in the order of the Government are totally impracticable and unworkable.

18. It is also contended by the petitioners that the very premise under which the above order has been issued by the Government indicates that the Government intends to curtail the right of managements to start CBSE schools in the private unaided sector. Such an attempt is wholly illegal, arbitrary and unsustainable. The rights guaranteed under the Constitution will be at peril if the above attempt is allowed to materialise. It is also pointed out by the learned counsel that the conditions imposed in clause (2) of the order extracted above are totally unworkable and aimed at throttling the legitimate right of managements to start schools with CBSE syllabus. Taking strong exception to the so called policy parameters as indicated by the Government in its order dated August 19, 2006 it is contended by the petitioners that the view taken by the Government is totally lopsided

and unimaginative. I am inclined to agree.

19. It cannot be disputed that an elected Government can have its own political philosophy which may have a bearing on the policies that it may intend to implement in the administration. Priorities may change and preferences may be at variance from those which were hitherto followed. Changing Governments may have to have the liberty to formulate its policies on the basis of the political vision which the parties in power may profess. It is true that socio-economic policies which may have a direct bearing on the life of the common man will get priority in such administrative matters. Educational policies in Kerala over the years have been perceived to be a very vulnerable area which have given rise to a catena of land mark decisions in the judicial history of the country.

20. Kerala is a State which boasts of 100% literacy. Though the State has achieved that optimum level , it has been noticed of late that the quality of education has been deteriorating, when compared to the over all standard achieved in other parts of the country. Therefore the demand for providing quality education to the younger generation has been very much under the active consideration of the educationists and others who have been working in that field.

21. One major concern of the Government that has been projected is that existing Government and aided schools will face division fall or threat of closure if more and more CBSE schools are allowed to be opened. In other words, the apprehension of the Government is that parents may prefer to put their children in CBSE schools ignoring Government/aided schools. Resultantly the student

strength in Government/aided schools will fall and teachers may have to be retrenched. The Government being the Pay Master, the burden to pay salary to the retrenched teachers will also be fastened on it. It is further contended on behalf of the Government that there is a disproportionate increase in the number of schools whereas the number of students is dwindling . Though the exact logic of this contention is not discernible, the contention of the learned Advocate General appears to be that the Government is bound to address the socio-economic impact of opening of new CBSE schools without any control, since the students belonging to poorer sections of the community may find it difficult to pay higher fees levied by the CBSE schools which in turn will mean denial of opportunity to poor students to attend schools.

22. It is pointed out by the learned Advocate General that education in the Government/aided schools does not cast any burden on the parents, whereas private/unaided schools collect heavy fees from the students. The Government is keen to ensure that education at the primary and secondary level is made totally inexpensive in the entire State. It is also pointed out by the learned Advocate General that more and more English medium classes are being started in Government schools to ensure that the students coming out of such institutions are able to compete with those studying in private, unaided English medium schools following CBSE/ICSE syllabus.

23. But I am afraid the above contentions are totally misconceived. While appreciating the anxiety of the Government to provide free or inexpensive education to children, it has to be remembered that its quality has to be brought on par with the standard

achieved in other parts of the country. Without going into the merits or demerits of the CBSE/ICSE syllabus, one cannot escape noticing the fact that the Board has been maintaining uniform pattern throughout the country. As pointed out by learned counsel for the petitioners, a student who is following the CBSE/ICSE syllabus will not find it difficult to adjust if he is forced to join any other CBSE./ICSE school in any part of the country. It may be true that the Kerala syllabus now being followed in the Government/aided schools have been prescribing NCERT text books accepted at the national level. But still it is common knowledge that the textbooks prescribed by the NCERT are not being followed in respect of all subjects.

24. It has to be remembered that any parent will prefer to give quality education to his child. If a good school is available in the locality naturally the preference will be to put his child in that school. If the Government apprehends that students strength may fall in the Government/aided schools if more and more C.B.S.E schools are allowed to be opened, it is undoubtedly a poor reflection on the quality of education that is being provided in the Government/aided schools. The first priority of the Government should be to gear up the existing schools to meet the challenge. Therefore the Government cannot be heard to say that CBSE/ICSE schools may pose a threat to existing Government/aided schools if they are allowed to start operation on a large scale. It cannot be believed that students from Government/aided schools will make an exodus to CBSE schools, if quality education is provided in those Government/aided schools. In that view of the matter, the contention raised by the Government in this regard cannot

be entertained.

25. It may also be true that the Government has to have some kind of control in the matter of grant of N.O.C for affiliation to CBSE, since there may have to be a balance between the facility to be provided to the poorer sections of the student community who may not be in a position to meet the expenses for attending such unaided schools. The question is as to what extent the Government can intervene in the matter. Provisions contained in Chapter V KER deal with the modalities for opening and recognition of schools in the Government and aided sector. Undoubtedly Chapter V does not take within its fold schools in the unaided sector which follow CBSE/ICSE syllabus. Grant of N.O.C is an executive or administrative power vested with the Government. But as mentioned earlier, the Government can necessarily seek guidelines from the provisions contained in Chapter V, to see whether there is educational need in a particular locality. Rule 2 of Chapter V prescribes the procedure for determining the areas where new schools are to be opened or existing schools are to be upgraded. Laying heavy emphasis on the rules contained in Chapter V, particularly on Rule 2, it is contended by the learned Advocate General that the Government is vested with absolute discretionary power and authority to decide whether the request for grant of N.O.C for affiliation in respect of a school in a particular area has to be granted or not. As noticed already, the Government has indicated the policy parameters in the matter of grant of N.O.C in a particular area primarily based on its apprehension about the threat of closure of existing Government/aided schools. It has not been brought to my

notice that in any of the areas in which the petitioners had requested for grant of N.O.C to start new schools, there is a full fledged English medium school or CBSE school already to cater to the needs of the students of the locality. Whatever be the educational policy, no Government can turn a blind eye to the need of the people especially when it comes to education which is a right guaranteed under Article 21A of the Constitution of India.

26. As mentioned earlier, in Kerala, the thrust is now on quality education and not on free primary/secondary education alone. If there are willing private unaided managements who are prepared to establish institutions to provide quality education, a more pragmatic and vibrant approach should prevail over the rigid, mundane and dogmatic perceptions. Of course the Government may have to step in to prevent a rat race in the field of education. Unscrupulous commercialism should never be encouraged. There are provisions both in the CBSE bye-laws and the KER which empower the Government to withdraw NOC and recognition if the situation so warrants. Over proliferation and unhealthy competition will undoubtedly ruin and corrode educational standards. But still, a pragmatic and discreet yardstick has to be applied, so that a healthy balance is maintained between the need for quality education and avoidance of unhealthy competition between Government/aided schools on one hand and unaided private institutions on the other.

27. The other question that remains for consideration is whether the applications submitted by the petitioners prior to issuance of the order of the Government dated June 13, 2007 are liable to be

considered in terms of the provisions contained in the then existing order of the year 1988. In this context learned Advocate General has invited my attention to some of the decisions of their Lordships of the Supreme Court in support of his contention that the Government is bound to consider the applications only in accordance with the clauses contained in the present Government Order. (See **Balco Employees' Union** v. **Union of India & Ors.**, 2002 (2) SCC 333, **Chief of Marketing (Marketing Division) Coal India Ltd**. v. **Mewat Chemicals & Tiny SSI Coal Pulverising Unit,** (2004)4 SCC 146, **Principal, Madhav Institute of Technology & Science** v. **Rajendra Singh Yadav & Ors.** (2000)6 SCC 608). It is contended by the learned Advocate General that the petitioners do not have any vested or accrued right for grant of NOC. Even assuming that the clauses contained in the earlier order were a little more liberal, the Government is bound to consider the applications only in the light of the present policy decision as reflected in the present order.

28. A perusal of the above judgments of the Supreme Court shows that they were rendered in cases relating to fiscal policies of the Government. In that view of the matter, no reliance can be placed on those judgments in the cases on hand. In my view, in the peculiar facts and circumstances of these cases the petitioners are entitled to contend that the Government is bound to consider their applications for grant of NOC for affiliation in the light of the order of 1988 which was in force at the time when they had submitted their applications. Even otherwise it has already been found that the decision of the Government to refuse to consider the applications of the petitioners in the light of the changed

policy decision cannot be sustained. In any view of the matter, the action of the Government in refusing to consider the applications of the petitioners for grant of NOC is totally illegal, arbitrary and unjust. The order of the Government in G.O (P).No.107/07/G.Edn. dated June 13, 2007 is quashed to the extent it relates to grant of N.O.C for affiliation to CBSE/ICSE.

29. Therefore the writ petitions are allowed. The respondents are directed to pass appropriate orders on the applications submitted by the petitioners for grant of NOC for affiliation to CBSE/ICSE in accordance with their respective merit and also in the light of the survey reports and other documents produced along with those applications in terms of the clauses contained in the order of the Government dated January 12, 1988. The Government shall take a decision in the matter as expeditiously as possible at any rate within one month from the date of receipt of a copy of this judgment.

30. CBSE shall enlarge the date for receipt of NOC from the Government till October 31, 2007. I am constrained to issue this direction to the CBSE in the peculiar facts and circumstances of the cases, though learned standing counsel has made a persuasive plea to keep in view the technical difficulties that the Board may face by such enlargement.

The petitioners shall be at liberty to re-present the applications which have been returned by the Government within one week from the date of receipt of a copy of this judgment, in which event the Government shall comply with the above directions and pass orders within the time frame mentioned above.

A.K. Basheer
Judge.

an.